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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-Defendant,

v.

APPLE INC.,

Defendant, Counterclaimant.

CASE NO. 4:20-CV-05640-YGR

Honorable Yvonne Gonzalez Rogers

**NON-PARTY KABAM INC.'S  
ADMINISTRATIVE MOTION TO  
SEAL CERTAIN TRIAL EXHIBITS  
OF PLAINTIFF EPIC GAMES, INC.  
AND TO SEAL THE COURTROOM  
DURING PRESENTATION OF  
CERTAIN CONFIDENTIAL  
MATERIAL AT TRIAL**

Pursuant to Federal Rule of Civil Procedure 26(c) and Local Rule 79-5, Non-Party Kabam, Inc. ("Kabam") brings this motion to seal the Trial Exhibits PX-0067 and PX-2204 on the ground that they contain highly sensitive, and competitively-valuable information, including, *inter alia*, internal business strategies and analysis regarding Kabam's user transactions, confidential financial data, as well as private information relating to Kabam's strategic partnerships, the release of which would harm Kabam, a non-party.

Epic Games, Inc. ("Epic") has not yet filed any of these exhibits with the Court, but it is possible Epic might offer one or more of these exhibits, or

1 testimony about their contents, at trial. Kabam brings this motion now in an  
 2 abundance of caution to ensure that its confidential information is protected and  
 3 sealed should it be presented or offered at trial. For the reasons set forth below and  
 4 in the accompanying Declarations of Erick Chang and Marc E. Mayer, Kabam  
 5 respectfully requests that the Court (1) seal these trial exhibits to prevent  
 6 competitive and economic harm, (2) close the courtroom to the public for any  
 7 testimony regarding these exhibits or the information they contain, and (3) direct  
 8 the parties not to refer to this information in opening statements, closing argument  
 9 or any demonstratives made available on the public record.

10 Pursuant to Civil Local Rule 7-11, Kabam met and conferred with Apple and  
 11 Epic regarding this Motion; Apple does not oppose the Motion, and Epic reported  
 12 that it does not take a position on this Motion and will submit objections to  
 13 Kabam's proposed sealing, if any, before trial.

14 Unredacted versions of these exhibits have been provided to the Court by  
 15 Kabam, should need arise for the Court to consider them in connection with this  
 16 Motion.

### 17 **LEGAL STANDARD**

18 Federal Rule of Civil Procedure 26(c) provides the "good cause" standard  
 19 for the purposes of sealing documents presented at trial. *Kamakana v. City and*  
 20 *Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). Documents, or portions  
 21 thereof, may be sealed if a party "establishes that the documents, or portions  
 22 thereof, are privileged, protectable as a trade secret or otherwise entitled to  
 23 protection under the law." Civ. L.R. 79-5(b).

24 The Court has "broad latitude" to prevent disclosure of certain materials "for  
 25 many types of information, including, but not limited to, trade secrets or other  
 26 confidential research, development, or commercial information." *Phillips ex rel.*  
 27 *Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002). The  
 28

1 test applied is whether “‘good cause’ exists to protect th[e] information from being  
 2 disclosed to the public by balancing the needs for discovery against the need for  
 3 confidentiality.” *Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010)  
 4 (quoting *Phillips*, 307 F.3d 1206, 1213 (9th Cir. 2002)).

5 Courts in this district have applied the “compelling reasons” standard to  
 6 applications to seal materials in connection with dispositive events, including trials  
 7 that are “more than tangentially related to the merits of a case.” *Ctr. For Auto*  
 8 *Safety v. Chrysler Grp. LLC*, 809 F.3d 1092, 1101-02 (9th Cir. 2016), *cert. denied*  
 9 *sub nom. FCA U.S. LLC v. Ctr. for Auto Safety*, 137 S. Ct. 38 (2016). “Compelling  
 10 reasons” exist to seal information when disclosure of such information may  
 11 become a vehicle for improper purposes, such as granting an unfair advantage to  
 12 competitors or causing a business irreparable financial harm. *Nixon v. Warner*  
 13 *Commc’ns, Inc.*, 435 U.S. 589, 598 (1978); *see also Ctr. for Auto Safety*, 809 F.3d  
 14 at 1097 (finding there was a compelling reason for sealing when records contain  
 15 business information that could be used to harm a litigant’s competitive standing);  
 16 *Apple Inc. v. Samsung Electronics Co., Ltd.*, 727 F.3d 1214, 1228 (Fed. Cir. 2013)  
 17 (concluding the district court abused its discretion in denying a motion to seal  
 18 about “profit, cost, and margin data”); *Oracle v. Concentric Analgesics*, 2021 WL  
 19 1022874 (N.D. Cal. Mar. 17, 2021) (finding compelling reasons to seal proprietary  
 20 and confidential business and intellectual property information that could give  
 21 competitors an unfair advantage). Such is the case here.

## 22 DISCUSSION

23 The Court should grant Kabam’s motion to seal its non-public  
 24 communications, which contain highly sensitive, and competitively-valuable  
 25 information, including, *inter alia*, internal business strategies and analysis  
 26 regarding Kabam’s user transactions, confidential financial data, as well as private  
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1 information relating to Kabam's strategic partnerships, the release of which would  
2 harm Kabam, a non-party.

3 Specifically, the documents reflect confidential, internal proprietary efforts  
4 by Kabam to combat fraudulent transactions and future strategies to be  
5 implemented regarding same (*see, e.g.*, PX0067, PX2204); provide confidential  
6 details regarding products produced by Kabam that have not yet been publicly  
7 launched (*see, e.g.*, PX0067); reference sensitive and confidential business  
8 information, including financial data relating to customer purchases and  
9 accounting issues (*see, e.g.*, PX0067, PX2204); reveal the details of Kabam's  
10 strategic partnerships, which could cause harm both to Kabam and its parent  
11 company, Netmarble Games (*see, e.g.*, PX0067, PX2204); and contain highly-  
12 sensitive gross revenue data, which can be easily calculated by reverse-engineering  
13 certain figures therein (*see, e.g.*, PX0067).

14 The Supreme Court has recognized that sealing may be appropriate to  
15 prevent judicial documents from being used "as sources of business information  
16 that might harm a litigant's competitive standing." *Nixon*, 435 U.S. at 598. Courts  
17 routinely seal information where disclosure could harm a litigant's competitive  
18 standing or provide an unfair advantage to competitors. *See, e.g., Vigdor v. Super*  
19 *Lucky Casino, Inc.*, No. 16-CV-05326, 2018 WL 4510734, at \*2 (N.D. Cal. Sept.  
20 18, 2018) (sealing "business and financial information relating to the operations of  
21 Defendants"); *Rodman v. Safeway Inc.*, No. 11-cv-03003, 2014 WL 12787874, at  
22 \*2 (N.D. Cal. Aug. 22, 2014) (granting motion to seal "information discussing  
23 Safeway's pricing strategy").

24 Good cause exists to seal the trial exhibits listed above, as well as any  
25 testimony about them. Kabam guards its internal business strategies (including  
26 those relating to anti-fraud initiatives), its strategic partnerships, and its financial  
27 data from competitors and the public, and derives a significant value from the  
28

1 confidentiality of such information. Public filing or testimony about the  
2 confidential information Kabam seeks to seal could be of interest to its competitors  
3 and customers and would allow unfair advantage and harm to its competitive  
4 standing.

5 **CONCLUSION**

6 For each of the foregoing reasons, Kabam respectfully requests that the  
7 Court seal the confidential information described above. Kabam also requests that  
8 the Court close the courtroom to the public (including the media) and to the  
9 parties' witnesses, employees or in-house counsel (those that do not qualify as  
10 persons who can receive confidential or highly confidential information under the  
11 protective order in place in this action) for any testimony regarding these exhibits  
12 or the information they contain, and direct the parties not to refer to this  
13 information in opening statements, closing argument or any demonstratives made  
14 available on the public record.

15 DATED: April 30, 2021

MITCHELL SILBERBERG & KNUPP LLP

17 By: /s/ Marc E. Mayer

18 Marc E. Mayer (SBN 190969)

19 Attorneys for Non-Party Kabam, Inc.